

SETH L. RESZKO, ESQ.
Nevada Bar # 9165
REZA ATHARI & ASSOCIATES
A Multi-Jurisdictional Firm
3365 Pepper Ln., Suite 102
Las Vegas, NV 89120
Tel: (702) 727-7777
Fax: (702) 458-8508
sethreszko@atharilaw.com
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ERLING OLERMO LOPEZ-POLANCO,

Plaintiff,

v.

LORETTA E. LYNCH, et. al.,

Defendants.

CASE NO.: 2:15-cv-01234-JCM-VCF

**DISCOVERY PLAN AND RULE 26(f)
REPORT**

PLAINTFF, ERLING OLMERO LOPEZ-POLANCO, (hereinafter “LOPEZ”) and
DEFENDANTS, LORETTA E. LYNCH, U.S. ATTORNEY GENERAL Et. Al., (hereinafter
“DEFENDANTS,” and with LOPEZ, referred to as “PARTIES”) hereby submit their Joint Discovery
Plan and Rule 26(f) Report under Rule 26(f) of the Federal Rules of Civil Procedure and Local Rule
26-1.

1. NATURE OF THE CASE AND SUMMARY OF THE ISSUES

This is an immigration case brought under the Administrative Procedures Act (hereinafter
“APA”), 5 U.S.C. § 702 et seq., in which Plaintiff challenges the denial by the United States
Citizenship & Immigration Services (hereinafter “USCIS”) of Plaintiff’s Petition for U Nonimmigrant
Status (Form I-918).

The U nonimmigrant classification provides temporary benefits to alien victims of qualifying
criminal activity who assist government officials investigating or prosecuting such crimes. An alien
granted U nonimmigrant classification may apply to become a lawful permanent resident after having

1 been continuously physically present in the United States in U status for a period of three years. The U
2 nonimmigrant classification also provides for derivative U status to a victim's qualifying family
3 members.

4 To be eligible for a U visa, certain requirements must be met: (1) the alien is the victim of
5 qualifying criminal activity; (2) the alien suffered substantial physical or mental abuse resulting from
6 his victimization; (3) the alien possesses information about the qualifying criminal activity of which he
7 was a victim; (4) the alien was helpful, is helpful, or is likely to be helpful to law enforcement
8 authorities investigating or prosecuting the qualifying criminal activity; (5) the qualifying criminal
9 activity occurred in the United States or violated U.S. laws; and (6) the alien is admissible to the
10 United States or USCIS has waived his ground(s) of inadmissibility. An alien applying for U
11 nonimmigrant classification who is inadmissible must submit, along with his Form I918 U petition, a
12 Form I-192, Application for Advance Permission to Enter the United States as a Nonimmigrant.

13 The principal issue in this case is whether LOPEZ was the victim of qualifying criminal
14 activity to be eligible for the U visa. LOPEZ contends that the CAR does not support USCIS's
15 decision, that the decision was arbitrary and capricious under the APA. *See* 5 U.S.C. §706(2)(A).
16 DEFENDANTS contend that the CAR supports USCIS's decisions and that the Court must defer to
17 the agency's reasonable interpretations of its governing regulations. LOPEZ seeks an order directing
18 DEFENDANTS to approve the Petition for U Nonimmigrant Status (Form I-918). Plaintiff seeks
19 attorneys fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412.

20 **2. DISCOVERY PLAN AND DISCOVERY CUT-OFF DATE**

21 The PARTIES agree that discovery in this case is limited to the CAR and that no privilege
22 issues arise from production of the CAR.

23 DEFENDANTS will provide to LOPEZ's counsel the Certified Administrative Record in PDF
24 format on or before December 14, 2015.

25 Accordingly, the PARTIES agree that this case is exempt from initial disclosures under Federal
26 Rule of Civil Procedure §26(a)(1)(B)(i). The PARTIES also agree that no further pretrial discovery or
27 disclosure of electronically stored information is necessary.

28 To prevent unauthorized access to LOPEZ's personal, financial and immigration records, the
PARTIES have stipulated and have agreed to DEFENDANTS filing the CAR with the Court under

seal concurrent with DEFENDANTS' filing of their Motion for Summary Judgment.

3. PROPOSED DEADLINE FOR AMENDING THE PLEADINGS AND ADDING PARTIES

The PARTIES propose December 14, 2015, as the deadline for joining additional PARTIES and amending pleadings.

4. FEDERAL RULE OF CIVIL PROCEDURE 26(a)(2) DISCLOSURES (EXPERTS)

Because the PARTIES agree that discovery in this case is limited to the CAR and do not anticipate the use of experts, a date for disclosure of expert testimony is not necessary.

5. DISPOSITIVE MOTIONS

The PARTIES agree that the Court can decide the entire case based on cross motions for summary judgment. Accordingly, the PARTIES agree that a trial in this matter is unnecessary. The PARTIES' proposed briefing schedule is as follows:

Deadline for Plaintiff's cross-motion for summary judgment:	January 12, 2016
Deadline for Defendants' cross-motion for summary judgment:	February 2, 2016
Deadline for Plaintiff's opposition brief and reply brief:	February 16, 2016
Deadline for Defendants' reply brief and noting date for cross motions:	March 1, 2016

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE

DATED: November 13, 2015

1 **6. PRETRIAL STATEMENTS AND PRETRIAL ORDER**

2 The PARTIES agree that a trial in this matter is unnecessary. If a trial is conducted, however,
3 the PARTIES agree to dispense with the pretrial statements and pretrial order of the sake of economy.

4 Dated: November 11, 2015

5
6 Respectfully Submitted,

7
8 REZA ATHARI & ASSOCIATES, PLLC.

9 /s/ Seth L. Reszko

10 SETH L. RESZKO

11 3365 Pepper Lane, Suite #102

12 Las Vegas, NV 89120

13 (702) 727-7777

14 (702) 458-8508 (Facsimile)

15 SethReszko@atharilaw.com

DANIEL BOGDEN,
United States Attorney

KRYSTAL M. ROSSE
Assistant US Attorney

WILLIAM C. PEACH
Director
Office of Immigration Litigation
District Court Section

CHRISTOPHER DEMPSEY
Assistant Director, District Court
Section

16 /s/ Troy D. Liggett

17 TROY D. LIGGETT

18 FL Bar No. 0086788

19 Trial Attorney

20 Office of Immigration Litigation
Civil Division

21 U.S. Department of Justice

22 P.O. Box 868, Ben Franklin Station

23 Washington, DC 20044

24 (202) 532-4765

25 (202) 305-7000 (Facsimile)

26 troy.liggett@usdoj.gov
27
28